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CENTRAL FAX CENTER****JUL 21 2005****FAX TRANSMISSION****DATE:** July 21, 2005**PTO IDENTIFIER:** Application Number 09/848,255-Conf. #6320  
Patent Number**Inventor:** Dennis C. Clemes et al.**MESSAGE TO:** US Patent and Trademark Office / MS ISSUE FEE**FAX NUMBER:** (703) 872-9306**FROM:** CONNOLLY BOVE LODGE & HUTZ LLP

Larry J. Hume

**PHONE:** (202) 331-7111**Attorney Dkt. #:** 21919-00013-US**PAGES (Including Cover Sheet):** 23**CONTENTS:** Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a) (4 pages)  
Notice of Abandonment mailed 6/14/05 (2 pages);  
Part B - Fee(s) Transmittal (PTOL-85) and USPTO facsimile receipt of 9/20/04 (2 pages);  
Annotated CBLH Deposit Account No. 22-0185 Statement for September, 2004 (7 pages);  
Status Inquiry and facsimile receipt of 12/21/04 (2 pages);  
2nd Status Inquiry and facsimile receipt of 2/18/05 (2 pages);  
3rd Status Inquiry and facsimile receipt of 3/18/05 (2 pages); and  
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CENTRAL FAX CENTER

JUL 21 2005

PTO/SB/97 (09-04)

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Application No. (if known): 09/848,255

Attorney Docket No.: 21919-00013-US

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Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181(a) (4 pages)  
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CENTRAL FAX CENTER****JUL 21 2005**Docket No.: 21919-00013-US  
(PATENT)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Dennis C. Clemes et al.

Application No.: 09/848,255

Confirmation No.: 6320

Filed: May 4, 2001

Art Unit: 1772

For: SULPHUR DIOXIDE GENERATOR

Examiner: C. P. Bruenjes

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT  
DUE TO USPTO ERROR UNDER MPEP 711.03(C) AND 37 CFR 1.181(a)****MS ISSUE FEE**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Petitioner hereby petitions the Commissioner to withdraw the holding of abandonment in the Notice of Abandonment mailed on June 14, 2005 due to USPTO error. The Notification incorrectly stated that the Applicant failed to timely pay the required issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

**Relevant Facts**

To the undersigned's knowledge and belief, and after making reasonable inquiry into the circumstances surrounding this application, a statement of the relevant facts with respect to this petition is provided below:

(1) Enclosed is a true copy of an executed Form PTOL-85 which was facsimile filed in the U.S. Patent & Trademark Office ("USPTO") on September 20, 2004. A facsimile receipt is also provided.

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(2) The above Transmittal included Deposit Account No. 22-0185 authorization for any fees related to this application, including the small entity Publication and Issue Fees of \$965.

(3) The date stamp by the USPTO OIPE on the copy of the PTOL-85 and the facsimile receipt show timely receipt by the USPTO on September 20, 2004, well before the Issue and Publication Fee due date of November 4, 2004.

(4) A copy of the September, 2004 CBLH Deposit Account No. 22-0185 statement is provided as an attachment to this Petition.

(5) CBLH Deposit Account No. 22-0185 was erroneously not charged by the USPTO on September 20, 2004 for the Issue and Publication Fees due for this application. This omission was clearly an error by the USPTO.

(6) CBLH Deposit Account No. 22-0185 had a balance of \$10,050.65 at the end of the day on September 20, 2004, the day the Issue Fee Transmittal was submitted to the USPTO (see attached Deposit Account statement). This amount was more than sufficient to pay the required fees of \$965.

(7) CBLH Deposit Account No. 22-0185 was charged \$300 on September 21, 2004 for the Publication Fee associated with this application, the day after the PTOL-85 was submitted for processing (see attached Deposit Account statement). The Issue Fee of \$665 was not charged to CBLH Deposit Account No. 22-0185, and has not been charged to this date.

(8) To exercise due diligence, the undersigned attorney submitted a "Status Inquiry" on three separate occasions (all attached) regarding the non-receipt of the Issue Notification for this application (see attached Status Inquiries dated December 21, 2004, February 18, 2005, and March 18, 2005). No USPTO response was received relative to these submissions before the receipt of the Notice of Abandonment mailed June 14, 2005.

(9) Lack of response by the USPTO to Applicants' three Status Inquiries is submitted as being USPTO error, and if not deemed to be USPTO error, such deficiency on the part of the USPTO at least does not represent efficient and timely processing and customer service.

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(10) The enclosed Notice of Abandonment was mailed on June 14, 2005, and was received by the undersigned attorney shortly thereafter.

(11) The Notice of Abandonment was erroneously delayed by the USPTO, and was not provided to Applicants until almost nine (9) months had expired (September 21, 2004 to June 14, 2005) after the alleged deficiency in the deposit account balance.

(12) The Notice of Abandonment indicated that the Issue and Publication Fees had not been received, and further indicated that there were insufficient funds in the deposit account, so that only the Publication Fee was charged. The statement regarding insufficient funds by the USPTO was in error, as reflected in the attached Deposit account statement for the month of September, 2004, showing an account balance of \$10,050.65 on September 20, 2005.

(13) This petition has been timely filed within two (2) months from the mailing date of the Notice of Abandonment, as required by 37 CFR 1.181(f).

**Relief Sought by Applicant**

Applicant respectfully requests the following relief:

(A) That the holding of abandonment be withdrawn due to USPTO error as if no abandonment had occurred;

(B) That CBLH Deposit Account No. 22-0185 be charged \$665 for the Issue Fee that was due on November 4, 2004 in this application, if the holding of abandonment is withdrawn;

(C) That the Publication Fee of \$300 paid on September 21, 2004 be applied to this application;

(D) That this application be processed for immediate issue by the Publication Branch;  
and

Application No.: 09/848,255

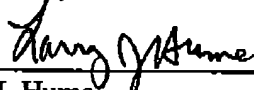
Docket No.: 21919-00013-US

(E) That an appropriate adjustment to the patent term be determined and applied because of USPTO error in order to compensate the patent owner for the delay in issue of the patent.

**No Fees are Believed to Be Due**

Although no Petition fees are believed to be due in this matter because of USPTO error, if any fees are due, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 22-0185, under Order No. 21919-00013-US, from which the undersigned is authorized to draw.

Respectfully submitted,

By   
Larry J. Hume

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Attorney for Applicant

Enclosure: Notice of Abandonment mailed 6/14/05  
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JUL 21 2005

NO. 6447 P. 7  
Petition to Revoke  
8-14-05



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United States Patent and Trademark Office  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,255	05/04/2001	Dennis Charles Clemes	032228.0006	6320
30678	7590	06/14/2003		
CONNOLLY BOVE LODGE & HUTZ LLP SUITE 800 1990 M STREET NW WASHINGTON, DC 20036-3425			EXAMINER BRUENES, CHRISTOPHER P	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JUL 21 2005

<b>Notice of Abandonment</b>	Application No.	Applicant(s)	
	09/848,255	CLEMES ET AL.	
	Examiner	Art Unit	
	BRUENJES, CHRISTOPHER	1772	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on \_\_\_\_\_.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☒ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  

Insufficient funds in deposit account. Issue fee was not charge only publication fee

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.